

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

M&I MARSHALL & ILSLEY BANK,)
)
Plaintiff,)
)
vs.)
)
T & D ASSOCIATES, LLC,)
THOMAS O. WAGNER and)
DELILA Y. WAGNER,)
)
Defendants.)

Case No. 11-0115-CV-W-ODS

ORDER AND OPINION GRANTING PLAINTIFF'S MOTION FOR JUDGMENT ON THE
PLEADINGS

Pending is Plaintiff's Motion for Judgment on the Pleadings. Defendants responded by declaring they "do not have a defense to the Motion and will not be filing a legal brief" After reviewing the Record, the Court concludes Plaintiff's motion (Doc. # 13) should be granted.

Judgment on the pleadings should be granted when the pleadings demonstrate there are no material facts to be resolved and the moving party is entitled to judgment as a matter of law. E.g., Faibisch v. University of Minnesota, 304 F.3d 797, 803 (8th Cir. 2002). In this case, the paragraphs of the Complaint admitted in Defendants' Answer establish the following undisputed facts:

In June 2003, Defendants executed a Promissory Note in favor of Plaintiff, evidencing a loan made by Plaintiff to Defendants in the amount of \$490,000. Complaint, ¶ 8. In June 2008, Defendants executed a second Promissory Note that was intended to replace the first note; the second note was for the principal amount of \$395,961.66. Complaint, ¶ 10. As security for both notes, Defendants pledged certain securities and investments held in a securities account. Complaint, ¶ 11. Defendants also executed a Deed of Trust on certain real estate and Executed an Assignment of Rents. Complaint, ¶¶ 14, 17.

Defendants have failed to make payments when due. Complaint, ¶ 19. In January 2011, Plaintiff notified Defendants they were in default and demanded full payment of the outstanding loan. Complaint, ¶ 20. Defendants have not complied with the demand. Complaint, ¶ 21.

The amount due on the loan is \$365,917.45. Judgment will be entered accordingly.

IT IS SO ORDERED.

DATE: May 20, 2011

/s/ Ortrie D. Smith
ORTRIE D. SMITH, SENIOR JUDGE
UNITED STATES DISTRICT COURT